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3 **UNITED STATES DISTRICT COURT**
4 **DISTRICT OF NEVADA**

5 JOHN KEENAN, through his guardian
6 KATHLEEN COX

7 Plaintiff,

8 v.

9 TOYS “R” US, INC.,

10 Defendant.

Case No. 2:05-CV-00615-KJD-LRL

ORDER

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13 Currently before the Court is Plaintiff’s Motion to Change Venue or in the Alternative,
14 Motion for Jury Trial (#100). Subsequent to filing said Motion, the Court held a Status Conference
15 (#101) in which Judge Lloyd D. George, who was then presiding over the case, ordered that the
16 action be forwarded to the Clerk of the Court for reassignment. Judge Lloyd D. George then recused
17 himself from the case, and the action was assigned to Judge Kent J. Dawson on random re-
18 assignment. (See ## 102, 105). Prior to the action being reassigned, Plaintiff filed an additional
19 Motion for Jury Trial (#103). Defendant filed a Response in opposition (#104), to which Plaintiff
20 filed a Reply. The Court has considered both of Plaintiff’s Motions, the Response, and Reply, and
21 issues its ruling on both Motions together herein.

22 **I. Background**

23 The Complaint in this case was filed in state court on January 18, 2005.¹ Defendant removed
24 the action to federal court on or about May 17, 2005. Defendant subsequently filed its Answer to
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26 ¹The underlying facts of this action have been briefed extensively by the Court and are integrated here in the
interests of judicial economy.

1 Plaintiff's Complaint on or about May 23, 2005. On or about July 18, 2005, Plaintiff filed a Motion
2 for Jury Trial. Defendant subsequently filed a Motion to Strike Plaintiff's Motion for Jury Trial,
3 which Plaintiff opposed, and to which Defendant filed a Reply. On September 20, 2005, Judge
4 Lloyd D. George issued an Order granting Defendant's Motion to Strike upon finding that "the
5 plaintiff has not shown cause beyond mere oversight or inadvertance," and holding that "the untimely
6 jury demand must be stricken" (#15).

7 Following the completion of discovery, Defendant filed a Motion for Summary Judgment,
8 which was granted by the Court on July 17, 2008. Plaintiff subsequently appealed the matter to the
9 Ninth Circuit Court of Appeals. One of the specific issues raised on appeal was whether the District
10 Court "erred in granting Toys "R" Us's Motion to Strike Plaintiff's Demand for Jury Trial." (#106 at
11 2.)

12 On September 13, 2010, the Ninth Circuit issued its Memorandum Decision in which it
13 affirmed in part, and reversed and remanded in part, this case. Regarding the issue of whether
14 Plaintiffs were entitled to a jury trial, the Court of Appeals specifically "affirm[ed] the district court's
15 decision to strike Keenan's untimely jury demand." (#93 at 4.) Specifically, the Court of Appeals
16 stated that [s]ince Keenan's failure to timely file a jury demand resulted from oversight, the district
17 court did not abuse its discretion." (*Id.*)

18 Here, Plaintiff seeks that the Court exercise its discretion to order a jury trial now that the
19 action has been remanded, because the remaining issues are "uniquely suited to fact-finding by a
20 jury." (#103). Plaintiff specifically avers that it is not seeking that the Court reconsider or reverse its
21 prior decision to strike Plaintiff's untimely jury demand, but rather exercise its discretionary
22 authority to further the "interests of justice" and "fairness", and "in recognition of the Plaintiff's
23 fundamental right to a jury trial." (#106 at 2.)

24 **II. Discussion**

25 Fed. R. Civ.P. 39(b) provides that a court may, "on motion, order a jury trial on any issue for
26 which a jury might have been demanded." Additionally, the Nevada Supreme Court has held that a

1 court maintains the discretion to order a jury trial, even where the moving party has waived its right
2 to a jury prior to appeal. See Executive Management, Ltd. v. Ticor Title Insurance Comany, 38 P.3d
3 872 (2002). Regarding the issue of whether to allow a party that initially waived its right to a jury
4 trial, to seek relief from said waiver, the Executive Management Court specifically chose to apply the
5 “more moderate approach taken by federal courts” to allow a party to move for such relief on remand
6 pursuant to Fed. R. Civ. P. 39(b).

7 Though pursuant to Executive Management and Fed. R. Civ. P. 39(b) the Court has
8 discretionary authority to grant Plaintiff’s Motion, here, Plaintiff presents no persuasive argument or
9 authority demonstrating that said relief is merited or apropos. Contrary to the facts in Executive
10 Management, the record in this action clearly demonstrates that in denying Plaintiff’s prior demand
11 for jury trial, the Court properly considered the circumstances of the case, and exercised its discretion
12 to deny the Motion. Moreover, and as stated above, upon appeal, the Ninth Circuit Court of Appeals
13 addressed the issue squarely, and upheld this Court’s decision. Additionally, upon remand, the
14 district court judge who presided over the underlying action and issued the Order on Summary
15 Judgment has recused himself from the action, and the case has been assigned a new judge.

16 III. Conclusion

17 Accordingly, **IT IS HEREBY ORDERED** that Plaintiff’s Motion to Change Venue and
18 Motion for Jury Trial (##100, 103) are **DENIED**.

19 DATED this 31st day of May, 2011.

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22 Kent J. Dawson
23 United States District Judge
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